

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

UNITED STATES OF AMERICA and)	
STATE OF LOUISIANA,)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	CV90-1240
MARINE SHALE PROCESSORS, INC.)	
and RECYCLING PARK, INC.)	
)	
Defendants,)	Judge Duplantier
)	
and)	
)	
SOUTHERN WOOD PIEDMONT COMPANY)	
Intervenor-Defendant)	
)	
and)	
)	
GTX, Inc.)	
Intervenor)	
)	
And Counterclaims.)	
)	

STIPULATION OF SETTLEMENT AND JUDGMENT

WHEREAS, the Second Amended and Supplemental Complaint in Civil Action No. CV 90-1240 ("Complaint"), filed by the Attorney General of the United States of America ("United States") at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), requests civil penalties and injunctive relief against Defendants Marine Sale Processors Inc. ("MSP"), and Recycling Park, Inc. ("RPI"), for violations of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., federal regulations promulgated under RCRA, and regulations

promulgated by the State of Louisiana and approved by EPA under RCRA (First, Second, Third, Fourth, and Fifth Claims for Relief); the Clean Water Act, 42 U.S.C. § 1251 *et seq.* ("C.A."), and a permit issued under the C.A. (Seventh and Eighth Claims for Relief); and the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* ("CAA"), the Louisiana State Implementation Plan approved by EPA under the CAA, and an air emissions permit issued by the State of Louisiana (Ninth, Tenth and Eleventh Claims for Relief); with respect to an alleged incinerator facility owned in part by MSP and in part by RPI, and operated by MSP in Amelia, Louisiana ("MSP Facility") (A description of the MSP Facility real property is attached hereto as Appendix A);

WHEREAS, the Complaint also seeks to recover from MSP costs incurred and to be incurred by the United States in response to the release or threatened release of hazardous substances pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607 (Sixth Claim for Relief);

WHEREAS, MSP and RPI filed an Answer and Counterclaims in Civil Action No. CV90-1240;

WHEREAS, the Louisiana Department of Environmental Quality ("LDEQ"), on behalf of the State of Louisiana, has intervened as a party Plaintiff in Civil Action No. CV90-1240;

WHEREAS, Recycling Park, Inc. ("RPI"), is the owner of real

property on which Plaintiffs allege that hazardous wastes generated at the MSP Facility have been disposed of ("RPI Facility")(A description of the RPI Facility real property is attached hereto as Appendix B);

WHEREAS, John M. Kent, Sr., at times material hereto, served as President of MSP and RPI;

WHEREAS, MSP filed a complaint against the United States on January 7, 1992, Civil Action No. CV92-0022;

WHEREAS, the district court in Civil Action No. 1240, on or about August 30, 1994, entered a judgment in favor of the United States and the State of Louisiana and against MSP on certain claims alleged in the Complaint, ordering MSP to pay civil penalties totaling \$8 million;

WHEREAS, MSP appealed the August 30, 1994 Judgment, and posted a supersedeas bond in the form of cash deposits in the Registry of the Court ("Court Registry Funds") in the original principal amount of \$8 million;

WHEREAS, the United States Court of Appeals for the Fifth Circuit ("Court of Appeals") affirmed that portion of the District Court's August 30, 1994 Judgment awarding \$4 million in penalties, vacated that portion of the Judgment awarding the remaining \$ 4 million in penalties, and remanded the matter to the District Court for further proceedings;

WHEREAS, on February 20, 1998, this Court entered a Consent

Decree addressing all pending matters in this litigation;

WHEREAS, the principal amount of \$4 million plus interest was paid from the Court Registry Funds to satisfy the \$4 million penalty award affirmed by the Court of Appeals;

WHEREAS, on or about May 8, 2002, an order was entered vacating the Consent Decree;

WHEREAS, as of May 30, 2006, the principal amount of \$6,225,995 remains in the Court Registry;

WHEREAS, the United States, the State of Louisiana, MSP, RPI, and John M. Kent, Sr., wish to settle without further litigation claims among the parties as specified below, and have agreed to the terms set forth in this Stipulation of Settlement and Judgment for that purpose;

WHEREAS, as part of such settlement, MSP and RPI have agreed to stipulate to a judgment as described below, and MSP, pursuant to La. R.S. 30:2031, has agreed to grant and donate all funds remaining in the Court Registry to the Secretary of the Louisiana Department of Environmental Quality ("Secretary"), conditioned upon their being escrowed by the Secretary in an interest bearing account, pursuant to La. R.S. 30:2031 (B), and expended solely for closure and remediation of contamination at the MSP Facility and/or the RPI Facility.

WHEREAS, the Parties to this Stipulation of Settlement and Judgment agree and the Court finds that settlement of these

matters without further litigation is in the public interest and that the entry of this Stipulation of Settlement and Judgment is the most appropriate means of resolving these matters.

NOW THEREFORE, it is stipulated and agreed by the United States, the State of Louisiana, MSP, RPI, and John M. Kent, Sr., and ADJUDGED, ORDERED AND DECREED BY THE COURT:

1. Final Judgment is hereby entered pursuant to Rules 54(b), 58 and 79, Fed. R. Civ. P., in favor of Plaintiffs, the United States of America and the State of Louisiana, and against Defendants, Marine Shale Processors, Inc., and Recycling Park, Inc., upon the First, Second, Fourth, and Fifth Claims for Relief in the Complaint; and in favor of Plaintiffs, the United States of America and the State of Louisiana, and against Defendant Marine Shale Processors Inc., upon the Seventh, Eighth, Ninth and Tenth Claims for Relief in the Complaint:

A. Ordering Marine Shale Processors, Inc., to pay a civil penalty to the United States of America and the State of Louisiana in the amount of \$3,325,995 for violations of the Resource Conservation and Recovery Act and the Louisiana Hazardous Waste Control Law, with interest thereon from date of judgment at the rate provided by law, all payments on said fine to be apportioned 50% to the United States and 50% to the State of Louisiana;

B. Ordering Marine Shale Processors, Inc., to pay a

civil penalty to the United States of America and the State of Louisiana in the amount of \$1.2 million for violations of the Clean Air Act, with interest thereon from date of judgment at the rate provided by law, all payments on said fine to be apportioned 50% to the United States and 50% to the State of Louisiana;

C. Ordering Marine Shale Processors, Inc., to pay a civil penalty to the United States of America in the amount of \$1.7 million for violations of the Clean Water Act, with interest thereon from date of judgment at the rate provided by law;

D. Ordering that John M. Kent, Sr., shall refrain from ever: (1) owning or controlling a majority interest in any business involved in treatment, storage or disposal of waste, or recycling of material, including but not limited to any entity that takes over operation of the MSP Facility; and (2) participating in the management of any business involved in treatment, storage or disposal of waste, or recycling of material, including but not limited to any entity that takes over operation of the MSP Facility, provided that this subparagraph shall not prohibit John M. Kent, Sr., from providing, for a period of up to one year, consulting services to an entity that takes over operation of the MSP facility (such consulting services may not include assistance with environmental permitting and compliance issues or the making of management decisions);

E. Ordering that the funds on deposit in the registry

of the Court in the amount of \$6,225,995 as of May 30, 2006, and all interest that has accrued thereon shall be paid to the Secretary of the Louisiana Department of Environmental Quality ("Secretary"). Upon receipt the Secretary shall deposit the funds in an interest bearing escrow account, pursuant to La. R.S. 30:2031 B. The Secretary shall expend such funds solely for closure and remediation of contamination at the MSP Facility and/or the RPI Facility. The payment of such funds shall not satisfy the Judgment for penalties set forth in Subparagraphs 1.A. through 1.C., above. Notwithstanding the above, \$10,000 shall be maintained in the court registry and may be used to pay real property taxes accrued after January 1, 2009, if needed, related to the properties on which the MSP and RPI Facilities are located; and

F. Ordering that MSP and its successors, RPI and its successors, John M. Kent, Sr., in his capacity as an officer and director of said entities, shall provide reasonable access to the MSP and RPI Facilities to representatives of the State of Louisiana Department of Environmental Quality and EPA, including any contractors retained by LDEQ or EPA, for the purposes of closure of the MSP and RPI Facilities and the investigation and cleanup of environmental contamination at the Facilities, and shall allow representatives of LDEQ, including contractors retained by LDEQ, to close, investigate and cleanup the MSP and

RPI Facilities in any manner that complies with applicable law and regulations. Any person not a party to this action seeking access to the MSP or RPI Facilities shall be shown a copy of this order and consent to the institutional controls imposed herein.

G. Ordering that MSP and its successors, RPI and its successors, John M. Kent, Sr., in his capacity as an officer and director of said entities:

(1) consent to the imposition of any institutional or engineering controls, or land use restrictions (collectively "Institutional Controls") that may be deemed appropriate by LDEQ and/or EPA as part of implementing or ensuring the effectiveness of measures that may be selected to remediate or close the MSP and/or RPI Facilities or to protect human health or the environment from contamination at the MSP and/or RPI Facilities.

(a) With respect to the MSP Facility such Institutional Controls shall include, without limitation, the following requirements: (i) the MSP Facility shall only be used for industrial/commercial land use as described in Section 2.9 of the LDEQ's Risk Evaluation/Corrective Action Program ("RECAP"); (ii) the concrete covering the kiln residue under the process area shall not be disturbed or removed; (iii) if any concrete covering the kiln residue under the process area is disturbed or removed, the person or entity who distributes or removes the material shall immediately repair and restore the same; (iv)

except as otherwise approved in advance in writing by EPA and LDEQ, if any kiln material is removed from the MSP Facility, it shall be disposed of in a Hazardous Waste Landfill under Louisiana regulations, LAC 33 Part V, or in an equivalent RCRA Subtitle C Landfill if outside Louisiana; and (v) no persons or entities shall interfere with any remedial or corrective actions approved by EPA and LDEQ and implemented at the MSP Facility.

(b) With respect to the RPI Facility such Institutional Controls shall include, without limitation, the following requirements: (i) the RPI Facility shall only be used for industrial/commercial land use as described in Section 2.9 of the LDEQ's Risk Evaluation/Corrective Action Program; (ii) any cap placed over the kiln residue shall not be disturbed or removed; (iii) if any cap material is disturbed or removed, the person or entity who distributes or removes the material shall immediately repair and restore the same; (iv) if any kiln material is removed from the RPI Facility, it shall be disposed of in a Type I Industrial Solid Waste Landfill under Louisiana regulations, LAC 33 Part VII, or in an equivalent RCRA Subtitle D Landfill if to be disposed of outside Louisiana, in a segregated cell containing no material other than the removed kiln residue, unless the total volume of the kiln residue removed from the RPI Facility is less than 100 tons, in which case a segregated cell is not required; and (v) no persons or entities shall interfere

with any remedial or corrective actions approved by EPA and LDEQ and implemented at the RPI Facility.

(2) shall execute any and all documents, including but not limited to any conveyance notices, easements, covenants, restrictions, servitudes, or future act of sale, deemed appropriate by LDEQ or EPA to implement such Institutional Controls, and, upon, request by LDEQ or EPA shall file such documents for record in the official real property records of the Clerk of Court of St. Mary Parish, Louisiana. MSP shall sign and record in the official conveyance records of the Clerk of St. Mary Parish, Louisiana, a Conveyance Notification in the form attached hereto as Appendix C. MSP shall include in any future act of sale, transfer, or other conveyance of any interest or right in all or part of the MSP facility, the form of transfer provisions attached hereto as Appendix D. RPI shall sign and record in the official conveyance records of the Clerk of St. Mary Parish, Louisiana, a Conveyance Notification in the form attached hereto as Appendix E; and RPI shall include in any future act of sale, transfer, or other conveyance of any interest or right in all or part of the RPI facility, the form of transfer provisions attached hereto as Appendix F; and

(3) shall cooperate in obtaining any state or local government approval required for such Institutional Controls and shall complete and execute any required

applications.

H. Ordering that MSP and its successors, RPI and its successors, John M. Kent, Sr., in his capacity as an officer and director of said entities, shall:

(1) pay any and all current, outstanding, and future taxes for the years 2006, 2007, and 2008 on any of the real properties on which the MSP and RPI Facilities are located;

(2) be prohibited from conveying, transferring, encumbering, or otherwise assigning title to or any interest in any of the real properties on which the MSP and RPI Facilities are located, including to John M. Kent Sr., any entity in which John M. Kent Sr. has a legal or equitable interest, or any third party, without the consent of EPA and LDEQ;

(3) provide the Plaintiffs with a renewable option for periods of five years, in the form attached hereto as Appendix G, for the transfer to a trust of title to the real properties on which the MSP and RPI Facilities are located for the purpose of sale for the benefit of the Plaintiffs after the Plaintiffs have certified that closure and remediation have been completed at the MSP and/or RPI Facilities. If the Plaintiffs exercise such option, the transfer to the trust of title to such real properties, shall satisfy the Judgment for penalties set forth in Subparagraphs I.A. through I.C., except for purposes of Subparagraph J below, provided that MSP, RPI and Jack Kent, Sr.

have complied with Subparagraphs I.F. through I.H. herein.

I. Ordering that MSP, RPI, and John M. Kent, Sr. shall not object to, challenge, or in any way seek to delay or impede the drawing of funds by the Secretary of the Louisiana Department of Environmental Quality ("Secretary") against the Letter of Credit #SB-007674-AD issued by Hibernia National Bank, for the benefit of the Secretary, as financial security for expenses of closure and post-closure activities at the MSP Facility, nor shall MSP, RPI, and John M. Kent, Sr. assert any claim to any such funds. Upon receipt of such funds, the Secretary shall deposit the funds in an interest bearing escrow account, and shall expend such funds solely for closure and remediation of contamination at the MSP Facility and/or the RPI Facility. The payment of such funds shall not satisfy the Judgment for penalties set forth in Subparagraphs 1.A. through 1.C., above.

J. Ordering that after the Plaintiffs have certified that closure and remediation have been completed at the MSP and/or RPI Facilities, if the properties on which the MSP and/or RPI Facilities are located are seized and sold in accordance with the provisions of R.S. 13:3851 through 13:3861, or if the EPA and LDEQ exercise their option for the trustee to sell the properties as set forth in Subparagraph 1.H.(3); MSP and its successors, RPI and its successors, John M. Kent, Sr., or any other entity in

which John Kent Sr. is an interested party may not offer to purchase or purchase such properties unless the Judgment for penalties set forth in Subparagraphs 1.A. through 1.C. above has been satisfied.

2. Final Judgment is hereby entered pursuant to Rules 54(b), 58 and 79, Fed. R. Civ. P., in favor of the United States of America and the Environmental Protection Agency and against Marine Shale Processing, Inc., and Recycling Park, Inc., on the Counterclaims of Marine Shale Processors, Inc., and Recycling Park, Inc.:

A. Ordering that Marine Shale Processors, Inc., and Recycling Park, Inc., take nothing on their Counterclaims; and

B. Ordering that the Counterclaims of Marine Shale Processors, Inc., and Recycling Park, Inc., are dismissed with prejudice.

3. The Sixth Claim for Relief in the Complaint is hereby dismissed without prejudice.

4. The United States of America and the State of Louisiana hereby release John M. Kent, Sr., from all civil liability for claims alleged either by the United States or the State of Louisiana in:

A. The First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Claims for Relief in the Complaint in Civil Action No. CV 90-1240;

B. The complaint in intervention filed by the State of Louisiana in Civil Action No. CV 90-1240;

C. Any complaint, penalty notice, compliance order, order or notice of violation in any pending (as of the date of lodging of this Stipulation of Settlement and Judgment) environmental administrative action, including but not limited to Compliance Order No. HE-C-02-0167 issued by LDEQ on or about April 21, 2002 and the Closure Order issued by EPA on or about September 30, 2002, by either the United States or the State of Louisiana with respect to the MSP Facility or with respect to the materials produced by operation of the MSP Facility, except for claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERLCA"); and

D. Any claim for payment of fees assessed by the LDEQ with respect to the MSP Facility, which are or have been in dispute.

5. In addition to and without limiting the release of John M. Kent, Sr., set forth in Paragraph 4 above, the United States and the State of Louisiana hereby release John M. Kent, Sr., from all civil claims under RCRA, the Clean Air Act, the Clean Water Act, the Louisiana Air Control Law, the Louisiana Water Control Law, regulations promulgated by EPA or the State of Louisiana thereunder, or permits issued by EPA or the State of Louisiana

thereunder, based on: (a) the operation or existence of combustion units and associated treatment, storage and disposal facilities at the MSP Facility prior to the date of lodging of this Stipulated Settlement and Judgment; or (b) the treatment, storage or disposal at the MSP Facility or the RPI Facility, prior to the date of lodging of this Stipulation of Settlement and Judgment, of materials generated by operation of the combustion units.

6. Except as provided in Paragraphs 7 and 8, the United States and the State of Louisiana hereby covenant not to sue or take administrative action against John M. Kent, Sr., for injunctive relief pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), or for costs of removal or remedial action pursuant to Section 107(a)(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(4)(A) relating to the MSP Facility and the RPI Facility.

7. Notwithstanding any other provision of this Stipulation of Settlement and Judgment, the United States and the State of Louisiana reserve, and this Stipulation of Settlement and Judgment is without prejudice to, the right to institute proceedings under CERCLA in this action or in a new action, or to issue an administrative order seeking to compel John M. Kent, Sr.:

(a) to perform response actions relating to the MSP Facility and/or the RPI Facility; or

(b) to reimburse the United States for costs of removal or remedial action if:

(i) conditions at the MSP Facility and/or the RPI Facility, previously unknown to EPA, are discovered; or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that contamination or a threat of a type that was unknown or of a magnitude greater than was known is present at the MSP Facility and/or the RPI Facility.

8. The United States and the State of Louisiana reserve and this Stipulation of Settlement and Judgment is without prejudice to, all rights against John M. Kent, Sr., not expressly included within Paragraphs 4, 5 and 6. Notwithstanding any other provision of this Stipulation of Settlement and Judgment, the United States reserve and the State of Louisiana reserve all rights under CERCLA against John M. Kent, Sr., with respect to:

A. liability arising from the past, present, or future disposal, release, or threat of release of waste material outside of the MSP Facility, the RPI Facility, and the locations referred to in VIII.B of the Consent Decree attached hereto as Appendix H;

B. liability for damages for injury to, destruction of,

or loss of natural resources, and for costs of any natural resource damage assessments;

C. criminal liability;

D. liability based on the following existing or occurring after entry of this Stipulation of Settlement and Judgment: the ownership or operation of the MSP Facility and/or the RPI Facility by John M. Kent, Sr.; or the transportation, treatment, storage or disposal of waste material, or the arrangement for the transportation, treatment, storage or disposal of waste material at or in connection with the MSP Facility and/or the RPI Facility by John M. Kent, Sr.; and

E. any claim for information and any claim for access to the MSP Facility and/or the RPI Facility for the purpose of closing the Facilities and remediating contamination at the Facilities, pursuant to Section 104 of CERCLA, and any claim based on any failure or refusal to provide requested information or access.

9. John M. Kent, Sr., MSP and RPI, hereby release the United States and the State of Louisiana (including all of their agencies and employees) from all civil liability for claims alleged against the United States by Marine Shale Processors, Inc., in:

A. MSP's counterclaim filed in the United States enforcement action, Civil Action No. CV 90-1240, including MSP's

claims brought under the Freedom of Information Act, 5 U.S.C. § 552;

B. MSP's complaint filed in Civil Action No. CV 92-0022; and

C. the counterclaim, answer, or similar pleading filed by any Defendant, or intervenor in any pending (as of the date of execution of this Stipulation of Settlement and Judgment) environmental administrative action before the EPA with respect to the MSP Facility and/or the RPI Facility or alleged waste generated at the MSP Facility and/or the RPI Facility, except that John M. Kent, Sr., reserves all rights to defend any claims which may be pursued against them under CERCLA other than claims for reasonable access to the RPI and MSP Facilities for the purposes of closure, investigation and clean up of the Facilities.

10. John M. Kent, Sr., hereby covenants not to sue and agree not to assert any claims or causes of action against the United States and the State of Louisiana under CERCLA with respect to the MSP Facility and the RPI Facility, including but not limited to:

A. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law; or

B. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the MSP Facility or the RPI Facility.

11. The releases and covenants not to sue set forth in Paragraphs 4-11 shall become effective following entry of this Stipulation of Settlement and Judgment, upon payment of the remaining Court Registry Funds to the State Of Louisiana.

12. This Stipulation of Settlement and Judgment is without prejudice to any further proceedings for injunctive relief against Marine Shale Processors, Inc., or Recycling Park, Inc., including injunctive relief on the claims that are the subject of this Stipulation of Settlement and Judgment.

13. This Stipulation of Settlement and Judgment shall be lodged with the Court for a period of not less than 30 days for public notice and comment. Further, the signature of the LDEQ Secretary (or his authorized representative) shall not be effective until the public notice and public comment requirements of La. R.S. 30:2050.7 have been satisfied. The United States and the State of Louisiana reserve the right to withdraw or withhold its consent if comments regarding the Stipulation of Settlement and Judgment disclose facts or considerations which indicate that this Stipulation of Settlement and Judgment is inappropriate, improper, or inadequate. MSP, RPI, and John M. Kent, Sr.,

consent to the entry of this Stipulation of Settlement and Judgment without further notice.

_____, 2006

UNITED STATES DISTRICT JUDGE

FOR UNITED STATES OF AMERICA:

Dated:

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources
Division

Dated:

RICHARD M. GLADSTEIN
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FOR THE ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

RICHARD E. GREENE
Regional Administrator
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Date: _____

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FOR LOUISIANA DEPARTMENT OF ENVIRONMENTAL
QUALITY

Mike D. McDaniel, Ph.D., Secretary

BY: _____
Harold Leggett, Ph.D.,
Assistant Secretary
Office of Environmental Compliance

Dated: _____
CHRISTOPHER A. RATCLIFF
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Special Assistant Attorney General
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Department of Environmental Quality
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JOHN M. KENT, SR., on behalf of
Marine Shale Processors, Inc.,
Recycling Park, Inc., and
in his individual capacity

SCHIFF LAW CORPORATION

Dated:

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